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either on its own initiative or on motion of a party.

[40 FR 30248, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59049, Nov. 15, 1994; 60 FR 25620, May 12, 1995]

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence?

(2) Are conclusions made in accordance with law, precedent, and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect or that his order in his initial decision should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's order or may remand the case for such purposes as the Board may deem necessary. The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings. If necessary or appropriate, a reasonable opportunity shall be afforded the parties to comment.

[59 FR 59049, Nov. 15, 1994]

§ 821.50 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition for rehearing, reargument, reconsideration, or modification of a Board order on appeal from an initial decision. Any such petitions shall be served on all other parties to the proceeding within 30 days after service of the Board's order on appeal from the initial decision. Initial decisions that have become final because they were not appealed may not be the subject of petitions under this section.

(b) *Timing and service.* The petition shall be filed with the Board and served on the parties within 30 days after service of the Board's order on appeal from the initial decision.

(c) *Contents.* The petition shall state briefly and specifically the matters of record alleged to have been erro-

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neously decided, the ground or grounds relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the order of the Board, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation why such substantiation is unavailable, and shall explain why such new matter could not have been discovered by the exercise of due diligence prior to the date of the hearing.

(d) *Grounds for dismissal.* Repetitious petitions will not be entertained by the Board and will be summarily dismissed.

(e) *Reply to petition.* Within 15 days after the service of the petition upon an adverse party, he may reply thereto by filing a copy of the reply with the Board, with proof of service upon the petitioner.

(f) *Stay of effective date of order.* The filing of a petition under this section shall operate to stay the effective date of the Board order, unless otherwise ordered by the Board.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989; 59 FR 59049, Nov. 15, 1994]

Subpart I—Rules Applicable to Emergency Proceedings and Other Immediately Effective Orders

§ 821.54 General.

(a) *Applicability.* This subpart shall apply to any order issued by the Administrator under section 609 of the Act: as an emergency order; as an order not designated as an emergency order, but later amended to be an emergency order; and any order designated as immediately effective or effective immediately.

(b) *Effective date of emergency.* The procedure set forth herein shall apply as of the date when the Administrator's written advice of the emergency character of his order has been received by the Office of Administrative Law Judges or by the Board.

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(c) *Computation of time.* Time shall be computed in accordance with § 821.10, including the provision that Saturdays, Sundays, and legal holidays of the Board shall always be counted in the computation.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59049, Nov. 15, 1994]

§ 821.55 Appeal, complaint, answer to the complaint, and motions.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency or other immediately effective order. The certificate holder shall serve a copy of his appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. The appeal shall either attach a copy of the Administrator's order or shall clearly indicate that an emergency or other immediately effective order is being appealed.

(c) *Complaint.* Within 3 days after receipt of the appeal, the Administrator shall file with the Board an original and 3 copies of his emergency or other immediately effective order as his complaint, and serve a copy on the respondent.

(d) *Answer to the complaint.* Within 5 days after service of the complaint upon respondent, he shall file his answer thereto. Failure to deny any allegation or allegations of the complaint may be deemed an admission of the allegation or allegations not answered.

(e) *Motion to dismiss and motion for more definite statement.* No motion to dismiss or for a more definite statement shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(f) *Discovery.* Discovery is authorized in emergency or other immediately effective proceedings and, given the short time available, parties are di-

rected to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in this subpart. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59049, Nov. 15, 1994]

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Immediately upon notification by the Administrator to the Board, and in no case later than 5 days after receiving notice from the Administrator that an emergency exists or that safety in air commerce or air transportation requires the immediate effectiveness of an order, the Board shall set, and notify the parties of, the date and place for hearing. The hearing shall be set for a date no later than 25 days after service of the complaint. To the extent not inconsistent with this section, the provisions of § 821.37(a) also apply.

(b) *Initial decision.* The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument. The provisions of § 821.42 (b) and (d) shall be applicable, (covering content, furnishing a copy of the initial decision excerpted from the record, and issuance date).

(c) *Conduct of hearing.* The provisions of §§ 821.38, 821.39, and 821.40, covering evidence, argument and submissions, and record, shall be applicable.

(d) *Effect of law judge's initial decision.* If no appeal to the Board by either party, by motion or otherwise, is filed within the time allowed, the law judge's initial decision shall become final but shall not be deemed to be a precedent binding on the Board.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59050, Nov. 15, 1994]

§ 821.57 Procedure on appeal.

(a) *Time within which to file a notice of appeal and content.* Within 2 days after